

BEFORE THE STATE TAX APPEAL BOARD
OF THE STATE OF MONTANA

COLSTRIP PROPERTIES,)	
)	DOCKET NO.: PT-2003-23
Appellant,)	
)	
vs-)	
)	
THE DEPARTMENT OF REVENUE)	FACTUAL BACKGROUND,
OF THE STATE OF MONTANA)	CONCLUSIONS OF LAW,
)	ORDER and OPPORTUNITY
)	<u>FOR JUDICIAL REVIEW</u>
Respondent.)	

The above-entitled appeal was heard on February 18, 2004 in the City of Forsyth, in accordance with an order of the State Tax Appeal Board of the State of Montana (the Board). The notice of the hearing was given as required by law.

The Appellant, Richard Burnett, owner of Colstrip Properties, provided testimony in support of the appeal. The Department of Revenue (DOR), represented by Richard Sparks, appraiser with the Rosebud County Appraisal Office, presented testimony in opposition to the appeal. Testimony was presented, exhibits were received, and the Board allowed the Appellant to submit an additional exhibit after the hearing. The exhibit is an estimate of repair to the subject property prepared by Shylo Construction and dated "6-5-94". The DOR was provided an opportunity to submit comments within a reasonable time upon receipt of this additional information, though

no such comments were received. The Board then took the appeal under advisement; and the Board having fully considered the testimony, exhibits and all things and matters presented to it by all parties, makes its findings and conclusions under jurisdiction of the Montana Code Annotated (MCA) and Administrative Rules of Montana (ARM). The duty of this Board is to determine the market value for the subject property based on the preponderance of the evidence. The taxpayer did not present credible evidence to support a value of \$7,000 for the land and \$24,000 for the improvements. The values proposed by the Department of Revenue, \$11,430 for the land and \$56,551 for the improvements, were adequately supported by a preponderance of the evidence.

STATEMENT OF THE ISSUE

The taxpayer contends that DOR has inequitably appraised the land and improvements on the subject property resulting in a higher assessment than he deems appropriate.

FACTUAL BACKGROUND

1. The subject property is residential in character and is legally described as follows:

Lot 5B, Block 3, Certificate of Survey 70623, City of Colstrip, County of Rosebud, State of Montana, and improvements located thereon. Assessor Number - 1245

2. For tax year 2003, the DOR valued the subject property at \$11,430 for the land and \$56,551 for the improvements for a

total value of \$67,981.

3. Mr. Burnett filed a timely appeal with the Rosebud County Tax Appeal Board on October 20, 2003 requesting values of \$7,000 for the land and \$24,000 for the improvements, stating, "damage to home" as the reason for the lower valuation.
4. In its December 8, 2003 decision, the Rosebud County Tax Appeal Board denied the appeal, stating:

The decision of the Rosebud County Tax Appeal Board is in favor of the Department of Revenue and is to disapprove the appeal. Their decision was based on exhibits presented by the Department of Revenue and lack of proof by the appellant.

5. Mr. Burnett filed a timely appeal of the Rosebud County Tax Appeal Board decision to this Board on December 16, 2003, stating:

Numerous houses have sold with extreme damage for around \$35,000 here in Colstrip. The DOR did not select comparables like mine. Also land prices are set by the power company.

TAXPAYER'S CONTENTIONS

Mr. Burnett succinctly stated in his original filing that the reason for his appeal was "damage to home." In his testimony, Mr. Burnett elaborated that the industrial owners of the generating facilities at Colstrip had erected a dam and surge pond nearby to the residential area in which his home is located. Several of Appellant's exhibits (Exhibit's 1,2,3,4 and 5) were designed to show that the water table in the area where his home is located has

arisen by reason of the proximity and elevation of the surge pond. According to Mr. Burnett, the owners of the industrial facilities at Colstrip have compensated several homeowners in the area for damages to their homes. In an exhibit that Mr. Burnett submitted after the hearing, a damage repair estimate provided by Shylo Construction indicates that the repair needed on his home would be \$53,200, according to an estimate that was prepared in June of 1994.

DOR CONTENTIONS

DOR Exhibit A is the property record card for the subject property giving its legal description as well as detailed information about the lot and the improvements thereon. Exhibit B is the written result of a review of the property that the DOR conducts once the taxpayer files an AB-26 form requesting such a review. In this instance, the DOR appraiser conducted a review and reported that, "Five very good comparables were used in determining the market value of the subject property." The report indicates that a cost-based approach to value produced a figure of \$64,900 for the subject property.

Using the data from the comparable properties, the report indicates that the market value approach produced a value of \$71,600 for the subject property. The computer-based Multiple Regression Analysis (MRA) approach produced a value of \$67,981. Mr.

Sparks from DOR testified that he felt that, because of the quality of the comparable sales, the market value or MRA should be used, and chose to use the MRA estimate to value, which in this case was to the benefit of the taxpayer.

Exhibit C presents the details of the subject property and five comparable sales properties that were used in the comparative analysis. Exhibit D is a map of a portion of the Colstrip townsite delineating the subject property and the comparable sales properties. Exhibit E is a compilation of sales, including the comparable sales used herein, for all of the area around Colstrip that is designated as Neighborhood 14. Exhibit F is a picture and brief data on the subject and comparable properties.

Exhibit G is a CALP model (Computer Assisted Land Pricing) that shows that the subject property is within the parameters of the comparable properties when analyzed according to a cost per square foot. Exhibit H is entitled "Equity Comparison" and is a spreadsheet prepared by DOR which lays out the details and values for the subject property and the five comparable properties used for analysis. Comparable Sale #1 is in close proximity to the appellant's residence and apparently subject to the same effect from subsurface moisture. In March of 2001, the property sold for \$69,319.

BOARD'S DISCUSSION

As the appellant in this case, the taxpayer has the burden of proof as to the appraisal values that he puts forward on this appeal. However, DOR must also support its appraisal values by providing credible evidence in their support. Western Airlines v. Michunovich 149 Mont. 347, 428 Pac. 2nd 3 (1967). Taxpayer in this appeal, Richard Burnett, claimed values for his residential property of \$31,000: \$7,000 for the land and \$24,000 for his residence and other improvements. When asked how he arrived at these figures during the County appeal, Mr. Burnett admitted that the amounts were an "arbitrary number" (Transcript of County Hearing, page 5). It would be a violation of this Board's legal duty to rely on such "arbitrary number[s]" to establish value. DeVoe v. Dept. of Revenue, 263 Mont.100, 866 Pac. 2nd 228 (1993).

The centerpiece of the taxpayer's evidence is a damage estimate prepared by a local contractor (Estimate from Shylo Construction). The estimate indicates that repairs costing up to \$54,000 would be needed to restore the damage suffered to taxpayer's residence by the subsurface waters in the area. Aside from being out of date (1994), this damage estimate is not dispositive on the issue of the value of the taxpayer's property. Based upon taxpayer's own testimony and exhibits (Ex's 1, 3, 4, and 5), the subsurface waters affected many other properties in the neighborhood.

The usual method of determining the value of residential property is to examine the market sales of like property. (15-8-111, MCA). In this instance, the DOR has presented five sales of comparable properties in the same neighborhood. (Exhibits C, D, E, F, and G) Comparable #1 is in the immediate vicinity of the taxpayer's residence, and the residence is very similar in size to taxpayer's but has a finished basement. The lot size is 2,000 square feet smaller. The price for the recent sale of that property was \$71,823, compared to the valuation used on taxpayer's property of \$67,981. The remaining comparables, all in the same neighborhood, produce similar valuation congruency, particularly when comparison is made on an appraised value/square foot basis (State's Exhibit H).

Based upon the record, the best indication of market value of the subject property for tax year 2003 is \$11,430 for the land and \$56,551 for the improvements, as determined by the DOR.

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CONCLUSION OF LAW

1. The State Tax Appeal Board has jurisdiction over this matter.
§15-2-301 MCA.
2. **§15-8-111 MCA. Assessment - market value standard - exceptions.** (1) All taxable property must be assessed at 100% of its market value except as otherwise provided.
3. **§15-2-301 MCA, Appeal of county tax appeal board decisions.**
(4) In connection with any appeal under this section, the state board is not bound by common law and statutory rules of evidence or rules of discovery and may affirm, reverse, or modify any decision.
4. It is true, as a general rule, that the appraisal of the Department of Revenue is presumed to be correct and that the taxpayer must overcome this presumption. The Department of Revenue should, however, bear a certain burden of providing documented evidence to support its assessed values. (Western Airlines, Inc., v. Catherine Michunovich et al., 149 Mont. 347, 428 P.2d 3, (1967)).
5. The Board finds that the evidence presented supports its conclusion that the decision of the Rosebud County Tax Appeal Board is affirmed.

ORDER

IT IS THEREFORE ORDERED by the State Tax Appeal Board of the State of Montana that the subject property shall be entered on the tax rolls of Rosebud County by the assessor of that county at the 2003 tax year value of \$11,430 for the land and \$56,551 for the improvements as determined by the Department of Revenue.

Dated this 10th day of March 2004.

BY ORDER OF THE

STATE TAX APPEAL BOARD

GREGORY A. THORNQUIST, Chairman

(SEAL)

JERE ANN NELSON, Member

JOE R. ROBERTS, Member

NOTICE: You are entitled to judicial review of this Order in accordance with Section 15-2-303(2), MCA. Judicial review may be obtained by filing a petition in district court within 60 days following the service of this Order.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 10^h day of March, 2004, the foregoing Order of the Board was served on the parties hereto by depositing a copy thereof in the U.S. Mails, postage prepaid, addressed to the parties as follows:

Richard Burnett
15 Elm Court
Colstrip, Montana 59323

Office of Legal Affairs
Department of Revenue
Mitchell Building
Helena, Montana 59620

Richard Sparks
Department of Revenue
Rosebud County Courthouse
Forsyth, Montana 59327

Harlin Steiger
Route 2, Box 59
Forsyth, Montana 59327

DONNA EUBANK
Paralegal